

## **1 Definition of Terms**

- 1.1 B & D Process Equipment B.V. and its affiliated operating companies, and its legal successors under universal title are the users of the Terms and Conditions of Sales and Realisation, hereinafter referred to as "the Terms and Conditions". Hereinafter they shall be referred to as 'we' and 'us'.
- 1.2 The 'purchaser / client' refers to any legal entity or natural person to whom we address our proposals and to those who provide proposals to us, those who issue an order to us and those with whom we conclude an agreement.

## **2 Scope**

- 2.1 Unless explicitly agreed otherwise, the Terms and Conditions solely govern all our proposals, agreements, contracts for professional services (to be performed by us) and all legal acts, deliveries and activities undertaken by us.
- 2.2 In respect of all proposals made by us and/or orders from the client accepted by us, the Terms and Conditions prevail over any terms and conditions of the client, even if those terms and conditions state to be applicable exclusively.
- 2.3 By awarding an order, the client is deemed to agree in full to the exclusive applicability of the Terms and Conditions.
- 2.4 Insofar as necessary, we explicitly reject the applicability of any terms and conditions of the purchaser / client.

## **3 Proposals**

- 3.1 All our proposals are without obligation until we have accepted the order in writing or we have started the delivery and/or construction.
- 3.2 Our proposals are based on delivery and/or construction under normal conditions and during normal working hours, unless explicitly agreed otherwise in writing.
- 3.3 Images, catalogues, drawings, calculations and other details provided by us are not binding, unless explicitly agreed in writing.
- 3.4 If delivery and/or construction takes place in accordance with working drawings to be submitted by us and to be approved by the purchaser / client, delivery and/or construction only takes place after we have received those working drawings approved by the purchaser / client.
- 3.5 In the event of a composite quotation, we are not obliged to perform a part of the order at a corresponding proportion of the stated price.

## **4 Ownership of designs**

- 4.1 Tools and/or documents produced or made available by us, including drawings, models, analyses, reports and calculations, even if costs were charged to the purchaser / client, and/or the order was accepted and/or constructed by us, remain our property.
- 4.2 The purchaser / client undertakes not to copy those documents or to show them, make available or give them in use to third parties and only to use those for the purpose for which they were made available to him. Third parties includes all persons employed in the organisation of the purchaser / client that do not necessarily need to use the documents.

## **5 Price**

- 5.1 The prices quoted by us are calculated including loading costs and are either ex-factory, or free warehouse of the purchaser or free place of assembly, insofar as the latter place is accessible by the means of transport without inconvenience or additional costs.
- 5.2 Packaging is not included in the stated price and may be charged separately by us to the purchaser / client.
- 5.3 In respect of constructing the work, the price includes assembly and operational delivery of the goods to be supplied by us and described in our quotation and/or order confirmation.
- 5.4 The price or prices given in the proposal is/are based on the prices that apply at the time of concluding the agreement/accepting the order.
- 5.5 If during the period between the date of the proposal and the date of delivery and/or construction, the prices of raw materials, materials, energy, wages, social security, taxes and/or other cost factors change, even if this is due to foreseeable circumstances, we are always entitled to change the quoted and/or agreed price accordingly, unless the quotation contains a validity date.
- 5.6 Price increases resulting from additions and/or changes to the agreement/order are at the purchaser / client's expense.
- 5.7 The prices quoted by us are in Euro or in another agreed currency. Any exchange-rate differences are at the risk of the purchaser / client.
- 5.8 The risk of the means of payment used to make a payment associated with the delivery or construction is borne by the purchaser / client.

**6 Period of delivery/construction, force majeure**

- 6.1 The period within which we make the delivery or construct the work commences when we have received all the details required for the delivery/construction, the requisite permits, exemptions, approvals and/or allocations have been obtained and/or the place where the work must be constructed is such, at our discretion, that the construction can start.
- 6.2 Unless explicitly agreed otherwise in writing, the periods within which the activities must be completed are never strict deadlines. In the event of late or no delivery/construction we must be issued with a written notice of default. We are not liable for the consequences of a delay in the delivery/construction, irrespective of how this was caused.
- 6.3 If the delivery and/or construction is fully or partially impeded by force majeure on our side, including any circumstance that is outside our will or control, foreseeable or not, that prevents the full or partial delivery and/or construction temporarily or permanently, we are entitled to suspend the delivery and/or construction, or to dissolve the agreement/the order, insofar as not constructed, and to claim payment for the part that was delivered/constructed, without being bound to pay any damages to the purchaser / client.

**7 Construction method**

- 7.1 The purchaser / client must ensure that any activities to be constructed by third parties are carried out in time and in such a manner that the construction of our activities is not delayed.
- 7.2 All plant and equipment and facilities, whether or not in accordance with our drawings and details, required for the set-up and operation of goods to be supplied by us are to be fitted or installed at the expense and risk of the purchaser / client and fall outside our responsibility.
- 7.3 At his expense, the purchaser / client must ensure that there are adequate facilities, at our discretion, for the delivery, closed storage and removal of our materials and equipment, raw materials and finished products or residues, and for, if we deem this necessary, the possibility to connect electrical machines, lighting, heating, gas, compressed air, water and other energy required for the construction.
- 7.4 Unless explicitly agreed otherwise in writing, the construction takes place under our leadership and in accordance with our instructions. We are solely responsible/liable for constructing those activities that should be carried out by us by virtue of the order we have accepted.
- 7.5 In the event of lost time, caused by delays due to not complying with the obligations included in paragraphs 1, 2, and 3 of this Article, the period for construction is extended accordingly and any resulting costs shall be borne by the purchaser / client. We are not liable for any damage resulting from the purchaser / client's late or improper compliance with the obligations included in paragraphs 1, 2 and 3 of this Article.

**8 Tests**

- 8.1 If the purchaser / client requires a test or a handover test, he shall enable us, immediately after the construction and operational set-up of the supplied goods, to carry out technical tests and to have the test or handover test take place.
- 8.2 All the auxiliary personnel, materials and energy required for the technical tests and handover tests shall be made available to us by the purchaser / client free of charge.
- 8.3 Tests and/or handover tests that are carried out by us shall be binding to the parties.

**9 Contract variations**

- 9.1 Additional work is everything that we supply/carry out - either at the request or the instructions of the client, or at the instructions of third parties, or due to new or changed regulations - that is over and above the goods and/or activities to be carried out as recorded in our proposal and/or order confirmation. Contract reductions are determined in the same manner.
- 9.2 If the purchaser / client wishes to amend the agreement or the construction conditions, we can only claim a higher price if we have pointed the purchaser / client in time to the need for a price increase resulting from this amendment, unless the purchaser / client should have been able to understand this need himself.
- 9.3 Amendments to the agreement or the conditions of construction shall be agreed in writing, except for urgent circumstances. The absence of a written order for additional work does not prejudice our rights to charge the purchaser / client for additional work.
- 9.4 Contract reductions are only deducted from the amount payable to us if we have consented explicitly in advance in writing.
- 9.5 Additional work is charged separately. Additional work is calculated on the principle of the conditions imposed on entering into the agreement/order.

**10 Transport**

- 10.1 Except when free delivery has been agreed explicitly in writing, transport of what we deliver, and of models and tools that are the property of the purchaser / client, takes place at the expense and risk of the purchaser /

client, even if the transport company carries a statement on the consignment note that all damage during transport is at the expense of the sender.

10.2 Any freight costs paid by us, we charge to the purchaser / client.

10.3 In the event of free delivery, the freight price is included in the agreed price. The transport insurance premium is not included.

## 11 Delivery and acceptance

The goods are deemed to have been delivered by us and accepted by the purchaser / client:

a. regarding delivery ex-factory, ex-warehouse, c.i.f. or f.o.b.: as soon as the goods are loaded onto/into the means of transport;

b. regarding free delivery: as soon as the goods have been delivered at the delivery address given by the purchaser / client;

unloading costs are not included;

c. regarding the construction of work: as soon as the goods have been fitted and if a handover test has been agreed, as soon as this has been carried out.

## 12 Retention of title

12.1 Irrespective of the provisions of Article 11, the ownership of the goods we have delivered is only transferred to the purchaser / client when the purchaser / client has settled all our claims regarding the consideration of the agreement or such an agreement and in respect of claims due to failure to comply with such an agreement, including interest and costs.

12.2 The risks regarding the delivered goods transfer to the purchaser / client at the time of delivery.

12.3 The purchaser / client is not entitled to transfer or make available to third parties, or encumber the goods in any way for as long as they have not been paid in full.

12.4 During the period that the ownership has not transferred to the purchaser / client by virtue of the provisions of paragraph 1 of this Article, but delivery has taken place, the purchaser / client is bound to return the goods to us in good condition upon our first request.

12.5 If the purchaser / client fails to comply with his payment obligations towards us or if we have good reason to fear that the purchaser / client will fail in his obligations, we are entitled to take back the goods we delivered under retention of title.

## 13 Payment

13.1 Unless agreed otherwise, all payments are made to us net in cash, without any deduction or offset, on transferring the goods to be delivered by us.

13.2 If the requisite amount is not paid on the agreed due date, the purchaser / client is lawfully in default without requiring a notice of default and liable to pay statutory commercial interest from the due date to the day of payment.

13.3 In the absence of payment in time, we are entitled to increase the amount payable by the purchaser / client with statutory and extrajudicial collection costs. These extrajudicial collection costs shall amount to at least 15% of the amount involved, with a minimum of € 250.

13.4 We are entitled at all times to require a letter of credit or security from the purchaser / client for compliance with his payment obligations before we make any delivery and/or commence with the work.

13.5 The purchaser / client's non-compliance with his payment obligations and/or provision of letter or credit or security entitles us to suspend the delivery and/or construction until this obligation has been met, or to cancel the agreement without being liable for any damages. This is without prejudice to our right to claim damages due to the late and/or non-performance of the agreement.

## 14 Guarantee and complaints

14.1 With due regard to the following limitations, we guarantee the fitness of the goods delivered by us, the work carried out by us and the quality of the materials used for that purpose, in the sense that defects of which the purchaser / client proves that they arose within six months of the delivery and/or completion of the construction of the work, solely, or predominantly arose due to faulty construction and/or manufacture, chosen by us, or due to the application of unfit materials, shall be repaired by us free of charge, provided the purchaser / client provides us with the opportunity to do so. Parts that we replace with new parts we receive back in ownership. The provisions of Article 7 apply by analogy. Wear parts are excluded from the guarantee at all times.

14.2 Defects that are fully or partly the result of a construction or an construction method chosen by the purchaser / client, and material or equipment chosen by him, or due to any government regulation regarding the construction, construction or choice of material, are not covered by the guarantee.

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- 14.3 If the purchaser / client has made any changes or repairs to goods and/or work constructed or delivered by us, or uses it for purposes other than for which it was delivered by us, or at variance with our instructions for use, we are not bound by any guarantee.
- 14.4 Complaints regarding externally observable defects must take place in writing, if a test takes place, immediately afterwards, if not within 14 days of delivery of the goods or completion of the work constructed by us; if that period is exceeded we are not bound by a guarantee.
- 14.5 Complaints regarding defects that cannot be observed externally must take place in writing within 14 days of their observation, but no later than 14 days following the guarantee period referred to under 1; if that period is exceeded we are not bound by a guarantee.
- 14.6 For goods that are not manufactured by us, the provisions of the previous paragraphs of this Article only apply insofar as the extent to which the supplier of the goods provided us with a guarantee. This provision only applies insofar as it is more favourable to the purchaser / client than the aforementioned provisions.
- 14.7 In the event of replacement or restitution of the goods, we take account of the use that was made of the delivered goods in the meantime.
- 14.8 Unless explicitly agreed otherwise, compliance with our guarantee obligation applies exclusively within the country of delivery of the goods/construction of the work.
- 14.9 Compliance with our guarantee obligation serves as the only form of damages. We are not bound to pay any other damages in whichever form.
- 14.10 We are not bound to any guarantee, by whichever name, if the purchaser / client complies with any obligation, resulting from the agreement or any other agreement associated with the agreement, either late, improperly or not at all, and neither if third parties have already made changes or repairs, whether or not at the instructions of the purchaser / client, without our prior written permission, to our delivered goods.

## 15 Liability

- 15.1 Our liability by virtue of the agreement is explicitly limited to compliance with the guarantee obligations referred to in Article 14. Any claim for any damage, irrespective of whether this concerns trading losses, indirect damage or other consequential damage, including loss of income, is excluded explicitly.
- 15.2 Without prejudice to the provisions of Article 14, we are not liable, except for gross negligence or intent on our part, for any costs, damage and/or interest, as a result of:
- breach of patents, licences, copyrights or other rights of third parties due to our use of details provided to us by the purchaser / client;
  - acts or omissions on the part of our subordinates or persons engaged by us to construct the agreements;
  - exceeding the agreed time of delivery and/or construction.
- 15.3 The purchaser / client indemnifies us against liability by virtue of the agreement and compensates us for all costs, damage and interests, arisen as a direct or indirect result of claims by third parties, in or out of court, regarding the construction of the agreement or any other agreement related to the agreement, that are instigated against us.

## 16 Returns

We only accept returns following prior written permission on our part, provided the return is free of charge.

## 17 Dissolution

- 17.1 If the purchaser / client meets the obligations from the agreement late, improperly or not at all, if there is serious doubt as to whether the client can fulfil his obligations from the agreement, in the event of his bankruptcy, suspension of payments, administration, shutdown, liquidation, full or partial transfer of his business or an important part of the operating assets or accounts receivable, also as security in the form of undisclosed or non-possessory right of pledge, we are entitled, without prejudice to the provisions of the previous Articles regarding suspension and dissolution, without a notice of default or judicial intervention by means of written notification and without being liable for any damages, to suspend or dissolve the agreement with immediate effect for maximum six months, insofar as this has not been constructed yet, without prejudice to our right to compensation for any damage and/or loss of earnings.
- 17.2 In the event of dissolution, as referred to under 1, the agreed price payable to us, becomes immediately due and payable whilst deducting any part already paid and costs not yet incurred by us. The purchaser / client is liable for any damage suffered by us, including interest and loss of earnings.
- 17.3 The materials and raw materials in our possession to construct the agreement become available to the purchaser / client and, if he has not taken them within 30 days, shall be sold by us at his expense.

## 18 Proof administration

Except for proof to the contrary, the details included in our administration are decisive for the parties in respect of the agreement.

## 19 Offset

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19.1 We are entitled to offset any debts that we may have in respect of the purchaser / client at any time with the claims we have on the purchaser / client at that time.

#### **20 Disputes, applicable law**

20.1 Any disputes, including those that are deemed a dispute by one of the parties, that result from the agreement or associated agreements, that may arise between the parties shall be put before:

- a. by the purchaser / client before the Sub-district court of Rotterdam;
- b. a court of our choice or the court in the domicile of the purchaser / client or to appoint arbitrators in accordance with the Reglement van het Nederlands Arbitrage Instituut.

20.2 All agreements that are governed by these Terms and Conditions are governed by Dutch law.

#### **21 Final clauses**

21.1 If any part of these Terms and Conditions, for which ever reason, is invalid in full or in part, the agreement and these Terms and Conditions continue in full force, whilst the parties are deemed to agree, in respect of the invalid clause, what approximates lawfully the tenor of the invalid clause as closely as possible.

21.2 In case the English translation differs from the Dutch text, the latter will prevail.

21.3 We are entitled to amend these Terms and Conditions at all times. The purchaser / client shall be informed in writing in time. The amendment shall take effect as of the time we have informed the purchaser / client in writing of the amendment.